



May 26, 2000

Mr. Bradford R. Breuer
Director
The Alamo
P.O. Box 2599
San Antonio, Texas 78299

OR2000-2097

Dear Mr. Breuer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135676.

The Alamo received a request for an “audited statement.” You explain:

The Daughters of the Republic of Texas, Inc. (DRT) serve as custodians of the Alamo Shrine and grounds in San Antonio, Texas. In its capacity as custodian of state property, the DRT does not receive tax revenues from the State of Texas, however, the funds generated from donations and sales in the Gift Museum are used to preserve the Alamo’s structure and grounds. These funds collected are considered State funds and the DRT in its capacity as trustee for the fund, files annual audited financial reports with the State of Texas. . . . Realizing that the DRT may well be under the definition of a “governmental body” (as defined by the [Public Information Act]) insofar as our role in expending state trust funds, we are unsure whether we must disclose the audited financial reports of our organization to [the requestor.]

Thus, you inquire as to whether the DRT in its capacity as custodian of the Alamo is a governmental body for purposes of the Public Information Act (the “Act”) and you indicate that the information that is responsive to the request for an “audited statement” consists of “audited financial reports filed with the State of Texas.”¹ You also state that the requested

¹The requestor does not specify a time period for the information she is seeking. Other than stating to this office that the requestor seeks your “audited financial statements,” you do not explain the scope of the responsive information. You also did not submit for our review the information that is responsive to the request. See Gov’t Code § 552.301(e)(1)(D). We note that the request is framed in the present tense, which

information may be excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. We have considered your contentions and the exceptions you claim and we have reviewed the information you have submitted.

As to your inquiry of whether the DRT is a governmental body "in its capacity as custodian of state property," we note that this office has previously addressed this issue. *See* Open Records Letter Nos. 88-352 (1988), 88-344 (1988), 88-192 (1988). In Open Records Letter No. 88-344 (1988), we specifically stated that the DRT "is subject to the [Public Information Act] to the extent that it receives public funds for the management of the Alamo. All information regarding the collection, management, and expenditure of those funds is public." We have no indication that any of the facts or circumstances have changed since the issuance of these prior rulings which would today require a different result. *See also* Gov't Code § 552.003(1)(A)(x) (governmental body includes the part, section, or portion of a corporation that spends or that is supported in whole or in part by public funds). Thus, we conclude that the DRT is a governmental body in this instance because the request seeks information concerning the collection, management, or expenditure of public funds.

As to your request for a decision, and in pertinent part, we note that section 552.301 of the Government Code provides that, "no later than the 15th business day after the date of receiving the written request," the governmental body must submit to the attorney general:

- (A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
- (B) a copy of the written request for information;
- (C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and
- (D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

implies that the requestor may be seeking only current financial statements. We also note, however, that a governmental body has a good faith duty to relate a request to that information which it holds. Open Records Decision No. 561 at 8 (1990). We thus advise that you may ask a requestor to clarify a request if the request is unclear. If a large amount of information has been requested, you may also discuss with the requestor how the scope of the request might be narrowed, provided you do not inquire into the purpose for which the information will be used. Gov't Code § 552.222(a), (b); Open Records Decision No. 304 (1982); *see also* Open Records Decision No. 663 (1999) (discussing clarification and narrowing of requests, and the circumstances in which the ten-day deadline of Gov't Code § 552.301(b) is tolled during the clarification process).

Gov't Code § 552.301(e)(1)(A), (B), (C), (D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

With respect to subsection (A) above, you have submitted no comments in support of the claimed exceptions, nor have you otherwise explained to this office how the above-stated exceptions would allow the information at issue to be withheld. As to subsection (C) above, you did not provide a signed statement of the date on which the written request for information was received. However, our review of the request itself indicates that it is dated and contains a facsimile notation of March 21, 2000. We find this constitutes evidence sufficient to conclude that the Alamo received the request on that date. As to subsection (D) above, you submitted neither a copy of the specific information requested, nor a representative sample of that information. Thus, because you did not properly comply with section 552.301 and pursuant to section 552.302, the information that is responsive to the request is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Additionally, by correspondence sent to you by facsimile on May 9, 2000 under section 552.303 of the Government Code, this office requested additional information from you to aid this office in rendering a decision. *See* Gov't Code § 552.303. The May 9th correspondence informed you that the Alamo had seven calendar days to submit to this office the additional information requested. Gov't Code § 552.303(d). To date, we have received no additional information from you. *See* Gov't Code § 552.303(e) (failure to timely provide this office the information requested under section 552.303 results in the presumption that the information responsive to the request is public information and must be released unless there exists a compelling reason to withhold the information). Therefore, we next address whether you have demonstrated a compelling reason under sections 552.302 and 552.303(e) for the information at issue to be withheld from the public.

With respect to the section 552.101 claim, you have not explained, nor is it apparent to this office, that the information that is responsive to the request is made "confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You also have not demonstrated how the information is excepted from disclosure by section 552.110. *See* Gov't Code § 552.110 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). As to the section 552.104 claim, we note that this is a discretionary exception which is waived if not properly asserted. Open Records Decision No. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding). Moreover, section 552.022 of the Government Code specifically provides that, unless it is made confidential under other law, a completed audit is public information and is not excepted

from required disclosure under the Act. *See* Gov't Code § 552.022(a)(1). You have accordingly made no compelling demonstration to overcome the above-cited presumptions that the information at issue must be released. We therefore conclude that you must release to the requestor, in its entirety, the information that is responsive to the request.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

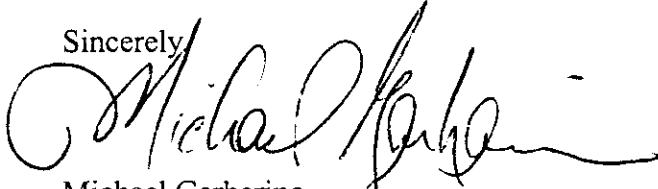
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²You have not submitted the information, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released under sections 552.302 and 552.303. If you believe the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below. *See also* Gov't Code § 552.352.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 135676

cc: Ms. Tracey DeLomba
765 Allens Avenue
Providence, Rhode Island 02905
(w/o enclosures)